

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition for Arbitration of  
an Amendment to Interconnection  
Agreements of

VERIZON NORTHWEST INC.

with

COMPETITIVE LOCAL EXCHANGE  
CARRIERS AND COMMERCIAL MOBILE  
RADIO SERVICE PROVIDERS IN  
WASHINGTON

Pursuant to 47 U.S.C. Section 252(b), and the  
*Triennial Review Order*.

DOCKET NO. UT-043013

RESPONSE OF SPRINT TO  
JOINT CLEC MOTION TO  
MAINTAIN THE STATUS QUO  
PENDING RESOLUTION OF  
LEGAL ISSUES

Sprint hereby files this Response to the Joint CLEC Motion for an Order Requiring Verizon to Maintain Status Quo Pending Resolution of Legal Issues. In the three months since the U.S. Court of Appeals for the D.C. Circuit in *USTA II* vacated the FCC's Triennial Review Order ("*TRO*")<sup>1</sup>, a great deal of uncertainty has mounted concerning UNE availability after expiration of the stay imposed in *USTA II* and/or pending the resolution of this arbitration. It is therefore important for the Washington

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<sup>1</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16798 (2003), corrected by Errata, 18 FCC Rcd 19020 (2003) ("*Triennial Review Order*" or "*TRO*"), affirmed in part and reversed in part, *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

Transportation and Utilities Commission ("Commission") to require Verizon to maintain the status quo under its now existing interconnection agreements.

Sprint has made genuine efforts to negotiate with Verizon and has been forthright in those efforts. On the other hand, Verizon has failed to address in this proceeding what specific obligations to which it believes it is bound, after June 15, 2004.<sup>2</sup> Verizon has likewise failed to provide specific direction to the Commission and to carriers regarding its operational plans in this uncertain regulatory environment. Sprint and the other CLECs are therefore left only to speculate what Verizon believes are its obligations to provide critical bottleneck facilities as UNEs, including high capacity loops.

The court in *USTA II* did not vacate the FCC's rules governing the provision of high capacity loops. The court addressed specific individual network elements raised on appeal by the ILEC and CLEC petitioners. The court vacated the FCC's rules on mass market switching and the UNE platform; DS1, DS3, and dark fiber transport; and interoffice transport for CMRS carriers.<sup>3</sup> The court, however, refrained from doing so with regard to high-capacity loops. The TRO properly found that requesting carriers are impaired on a national basis without access to DS1, DS3, and dark fiber loops.<sup>4</sup> The

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<sup>2</sup> The current stay expires June 15, 2004. On May 24, the parties moved the court to extend the stay pending the filing of any petitions for certiorari at the U.S. Supreme Court.

<sup>3</sup> *USTA II*, 359 F.3d at 568-71, 573-74.

<sup>4</sup> TRO at ¶¶ 298, 313, 324. These national findings are subject to strictly-limited state commission fact findings of non-impairment at particular customer locations, self-provisioning, and wholesale alternatives. *Id.* ¶¶ 328-29, 332, 335-37, 339-340.

USTA II decision did not vacate the TRO's findings on these UNEs. Despite these facts, Verizon has failed to commit in this state to fulfill its obligations with respect to high-capacity loops.

Intervention by the Commission is critical. Verizon must be required to maintain the *status quo* with respect to the pricing and availability of existing UNEs, most notably high capacity loops. Furthermore, Verizon should be required to clarify its position and intent on these issues in a timely fashion so that the Commission may address any further disputes that arise.

The Commission granted Verizon's motion for an abeyance in this proceeding.<sup>5</sup> The Commission granted the motion "subject to the condition that Verizon maintains the *status quo* under existing interconnection agreements in Washington State by continuing to offer UNEs consistent with the agreements at existing rates pending completion of the arbitration."<sup>6</sup> The Public Utility Commission of Texas also granted SBC's similar motion to hold arbitration of interconnection agreements in abeyance based, in part, on SBC's assurances that UNEs will continue to be offered consistent with those agreements.<sup>7</sup> No such assurances have been provided by Verizon in Washington.

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<sup>5</sup> *In the Matter of the Petition for Arbitration of an amendment to Interconnection Agreements of Verizon Northwest, Inc.*, Docket No. UT-043013, Order No. 4, Granting Motion to Hold Proceeding in Abeyance (May 21, 2004) ("Order No. 4").

<sup>6</sup> Order No. 4, at ¶ 18.

<sup>7</sup> Appendix C, Public Utility Commission of Texas, Docket No. 28821, *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, Order Abating Proceeding at 1.

Immediate action by the Commission is necessary to protect competition and the *status quo* against Verizon's selective interpretation and application of *USTA II* and from any other attempt by Verizon to inappropriately raise UNE rates or limit UNE availability. Sprint requests that the Commission require Verizon to maintain the *status quo* under its existing Washington interconnection agreements by continuing to offer UNEs consistent with those agreements at existing rates.

Respectfully submitted this 2<sup>nd</sup> day of June 2004.

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